

Internal Revenue Service

Number: **201436033**
Release Date: 9/5/2014

Index Number: 351.00-00, 355.01-00,
355.03-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B06
PLR-137178-13

Date:
March 11, 2014

LEGEND

Distributing =

State A =

Year =

Date 1 =

Operating Partnership =

State B =

Date 2 =

a =

b =

Real Estate Business =

Segment A =

Segment B =

Segment C =

Segment D =

Controlled(B) =

Controlled(C) =

Dear _____ :

This letter responds to your August 21, 2013, request for rulings on certain federal income tax consequences of the Proposed Transaction (defined below). The information provided in that request and subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether any of the Distributions (step three of the Proposed Controlled(B) Transaction and the Proposed Controlled(C) Transaction as defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporations, or any combination thereof (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent or greater interest in the distributing corporation or the controlled corporations (see § 355(e) and § 1.355-7).

SUMMARY OF FACTS

Distributing is a statutory real estate investment trust ("REIT") organized in State A in Year. Distributing has continuously qualified to be a REIT for federal income tax purposes beginning with its taxable year ended Date 1. Distributing has a single class of common shares outstanding which are publicly traded. It also has several classes of preferred shares.

Distributing is the sole general partner of Operating Partnership, a State B limited partnership formed on Date 2. Distributing owns approximately a of the common limited partnership units in Operating Partnership and the remainder are owned by approximately b other limited partners (the "Limited Partners"). Operating Partnership has also issued some preferred units owned by Distributing and other limited partners.

Operating Partnership is primarily engaged in Real Estate Business. Operating Partnership is organized into four separate segments (the “Segments”): Segment A, Segment B, Segment C, and Segment D.

Distributing intends to engage in either or both of the following transactions (separately the “Proposed Controlled(B) Transaction” and the “Proposed Controlled(C) Transaction”; collectively the “Proposed Transaction”).

1. Proposed Controlled(B) Transaction

STEP ONE. Controlled(B) will be formed as a State A statutory real estate investment trust, wholly owned by Operating Partnership, and Operating Partnership will contribute to the capital of Controlled(B), in exchange for all of the common shares of Controlled(B): (i) substantially all of the assets of Segment B and other assets, subject to liabilities, and (ii) all of the stock it owns in certain subsidiary REITs associated with Segment B (which stock would not be subject to any liabilities) (the “Controlled(B) Exchange”). Operating Partnership’s Segment B employees will become employees of Controlled(B) (or its disregarded entities), which will continue the operations of Segment B.

STEP TWO. Operating Partnership will distribute all of the common shares of Controlled(B) to Distributing and the Limited Partners, pro rata with respect to their common units in Operating Partnership.

STEP THREE. Distributing will distribute all of its Controlled(B) common shares pro rata to the shareholders of Distributing’s common shares (“the Distributing Shareholders”).

2. Proposed Controlled(C) Transaction

STEP ONE: Controlled(C) is formed as a State A statutory real estate investment trust, wholly owned by Operating Partnership, and Operating Partnership will contribute to the capital of Controlled(C), in exchange for all of the common shares of Controlled(C): substantially all of the assets of Segment C and other assets, subject to liabilities (the “Controlled(C) Exchange”). Operating Partnership’s Segment C employees will become employees of Controlled(C) (or its disregarded entities), which will continue the operations of Segment C.

STEP TWO: Operating Partnership distributes all of the common shares of Controlled(C) to Distributing and the Limited Partners, pro rata with respect to their common units in Operating Partnership.

STEP THREE: Distributing distributes all of its Controlled(C) common shares pro rata to the Distributing Shareholders.

REPRESENTATIONS

STEP ONE of the Proposed Controlled(B) Transaction

The taxpayer makes the following representations with respect to STEP ONE of the Proposed Controlled(B) Transaction:

1. No stock or securities will be issued by Controlled(B) for services rendered to, or for the benefit of, Controlled(B) in connection with the transaction, and no stock or securities will be issued for indebtedness of Controlled(B) that is not evidenced by a security or for interest on indebtedness of Controlled(B) which accrued on or after the beginning of the holding period of the transferor(s) of the debt.
2. Operating Partnership neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
3. Controlled(B) will report items which, but for the transfer of assets and liabilities to Controlled(B), would have resulted in income or deduction to Operating Partnership in a period subsequent to the transfer and such items will constitute income or deduction to Controlled(B) when received or paid by it. The proceeds received in collection of the income items will be included as ordinary income in computing the taxable income of Controlled(B).
4. The transfer of assets and liabilities to Controlled(B) is not the result of solicitation by a promoter, broker, or investment house.
5. Operating Partnership will not retain any rights in the property transferred to Controlled(B).
6. The value of the Controlled(B) stock received by Operating Partnership in exchange for accounts receivable will be equal to the net value of the accounts transferred, i.e., the face amount of the accounts receivable previously included in income less the amount of the reserve for bad debts.
7. There will be no indebtedness between Controlled(B) and Operating Partnership, and there will be no indebtedness created in favor of Operating Partnership as a result of the transaction.
8. Any debt relating to stock being transferred to Controlled(B) that will be assumed (or to which such stock is subject) was incurred to acquire such stock and was incurred when such stock was acquired, and Operating Partnership will be transferring

all of the stock for which the acquisition indebtedness being assumed (or to which such stock is subject) was incurred.

9. The total adjusted basis of the assets transferred by Operating Partnership to Controlled(B) in the transaction will equal or exceed the amount of liabilities assumed (within the meaning of Code section 357(d)) by Controlled(B) plus any liabilities to which the transferred assets are subject.

10. The total gross fair market value of the assets transferred by Operating Partnership to Controlled(B) in the transaction will equal or exceed the sum of the liabilities assumed (within the meaning of Code section 357(d)) by Controlled(B) plus any liabilities to which the transferred assets are subject. No liabilities owed to Controlled(B) by Operating Partnership or Distributing will be discharged or extinguished in connection with the distribution. The fair market value of the assets of Controlled(B) will exceed the amount of its liabilities immediately after the transaction.

11. The liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

12. The transfers and exchanges between Operating Partnership and Controlled(B) will occur under a plan agreed upon before the transaction in which the rights of the parties are defined. All exchanges will occur on approximately the same day.

13. There is no plan or intention on the part of Controlled(B) to redeem or otherwise reacquire any stock to be issued in the transaction.

14. Taking into account any issuance of additional shares of Controlled(B) stock; any issuance of stock for services; the exercise of any Controlled(B) stock rights, warrants, or subscriptions; a public offering of Controlled(B) stock; and the sale, exchange, transfer by gift or other disposition of any of the stock of Controlled(B) to be received in the exchange, Operating Partnership will be in "control" of Controlled(B) within the meaning of Code section 368(c).

15. Operating Partnership will receive stock approximately equal to the fair market value of the property transferred to Controlled(B).

16. Controlled(B) will remain in existence and retain and use the property transferred to it in a trade or business.

17. There will be no plan or intention by Controlled(B) to dispose of the transferred property other than in the normal course of business operations.

18. Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the transaction.

19. The transfer to Controlled(B) will not be a transfer to an investment company within the meaning of Code section 351(e)(1) and Treas. Reg. § 1.351-1(c).

20. Operating Partnership is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of Code section 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of Operating Partnership.

21. Controlled(B) will not be a “personal service corporation” within the meaning of Code section 269A.

STEP TWO of the Proposed Controlled(B) Transaction

The taxpayer makes the following representations with respect to STEP TWO of the Proposed Controlled(B) Transaction:

22. Under Code section 731, no gain or loss will be recognized by Distributing or Operating Partnership as a result of the distribution of Controlled(B) stock by Operating Partnership to Distributing.

23. Distributing’s tax basis in its Controlled(B) stock will be determined by reference to Operating Partnership’s tax basis in the Controlled(B) stock under Code section 732(a)(1).

STEP THREE of the Proposed Controlled(B) Transaction

The taxpayer makes the following representations with respect to STEP THREE of the Proposed Controlled(B) Transaction:

24. Distributing, Controlled(B), and their respective shareholders will each pay their own expenses, if any, incurred in connection with the Proposed Controlled(B) Transaction.

25. No part of the consideration to be distributed by Distributing will be received by a Distributing Shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

26. Any indebtedness owed by Controlled(B) (or any entity controlled directly or indirectly by Controlled(B)) to Distributing after the Proposed Controlled(B) Transaction will not constitute stock or securities.

27. Neither the active trades and businesses of Distributing and Controlled(B), nor control of an entity conducting such businesses, were acquired during the five-year period ending on the date of the Proposed Controlled(B) Transaction in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.

28. The five years of financial information submitted on behalf of Distributing and Operating Partnership is representative of present operations of the Real Estate Business, and with regard thereto, there have been no substantial operational changes since the date of the last financial statements submitted.

29. The five years of Segment B financial information submitted on behalf of Controlled(B) is representative of the present operation of Segment B, and with regard thereto, there have been no substantial operational changes since the date of the last financial statements submitted.

30. No intercorporate debt will exist between Distributing and Controlled(B) at the time of, or subsequent to, the distribution of the Controlled(B) stock.

31. Payments made in connection with all continuing transactions, if any, between Distributing and Controlled(B), will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

32. Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Controlled(B) Transaction.

33. Following the Proposed Controlled(B) Transaction, Distributing and Controlled(B) will each continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the Real Estate Business conducted prior to consummation of the transaction.

34. As of the date of the Proposed Controlled(B) Transaction, there will be no plan or intention to liquidate either Distributing or Controlled(B).

35. The distribution of the stock of Controlled(B) is carried out for the following corporate business purposes: (i) to allow Distributing and Controlled(B) to more effectively attract and retain management and key employees, (ii) to increase each company's ability to raise capital, including the company's ability to use its stock as acquisition currency, (iii) to allow Distributing and Controlled(B) to allocate capital more appropriately and to eliminate conflicts over capital allocation decisions, and (iv) to allow Distributing's management to focus on the retained Segments, while allowing Controlled(B)'s independent management to focus on Segment B. The distribution of the stock of Controlled(B) is motivated, in whole or substantial part, by one or more of these corporate business purposes.

36. For purposes of Code section 355(d), immediately after the Proposed Controlled(B) Transaction, no person (determined after applying Code section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in Code sections 355(d)(5) and (8)) during the five-year period (determined after applying Code section 355(d)(6)) ending on the date of the Proposed Controlled(B) Transaction.

37. For purposes of Code section 355(d), immediately after the Proposed Controlled(B) Transaction, no person (determined after applying Code section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled(B) stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled(B) stock, that was either (i) acquired by purchase (as defined in Code sections 355(d)(5) and (8)) during the five-year period (determined after applying Code section 355(d)(6)) ending on the date of the Proposed Controlled(B) Transaction or (ii) attributable to distributions on Distributing stock that were acquired by purchase (as defined in Code sections 355(d)(5) and (8)) during the five-year period (determined after applying Code section 355(d)(6)) ending on the date of the Proposed Controlled(B) Transaction.

38. Immediately after the Proposed Controlled(B) Transaction, (i) neither Distributing nor Controlled(B) will be a disqualified investment corporation (within the meaning of Code section 355(g)(2)), and (ii) if any person holds a 50% or greater interest (within the meaning of Code section 355(g)(3)) in any disqualified investment corporation, such person will have held such interest in such corporation (either directly or through attribution) immediately before the Proposed Controlled(B) Transaction.

39. The Proposed Controlled(B) Transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled(B) or both.

40. The Proposed Controlled(B) Transaction is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest (within the meaning of Code section 355(d)(4)) in Distributing or Controlled(B) (including any predecessor or successor of any such corporation). There will not have been any agreements, understandings, arrangements, or substantial negotiations regarding any acquisition of stock representing a 50% or greater interest in Distributing or Controlled(B) at any time during the two-year period ending on the date of the Proposed Controlled(B) Transaction.

STEP ONE of the Proposed Controlled(C) Transaction

The taxpayer makes the following representations with respect to STEP ONE of the Proposed Controlled(C) Transaction:

41. No stock or securities will be issued by Controlled(C) for services rendered to, or for the benefit of, Controlled(C) in connection with the transaction, and no stock or securities will be issued for indebtedness of Controlled(C) that is not evidenced by a security or for interest on indebtedness of Controlled(C) which accrued on or after the beginning of the holding period of the transferor(s) of the debt.

42. Operating Partnership neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

43. Controlled(C) will report items which, but for the transfer of assets and liabilities to Controlled(C), would have resulted in income or deduction to Operating Partnership in a period subsequent to the transfer and such items will constitute income or deduction to Controlled(C) when received or paid by it. The proceeds received in collection of the income items will be included as ordinary income in computing the taxable income of Controlled(C).

44. The transfer of assets and liabilities to Controlled(C) is not the result of solicitation by a promoter, broker, or investment house.

45. Operating Partnership will not retain any rights in the property transferred to Controlled(C).

46. The value of the Controlled(C) stock received by Operating Partnership in exchange for accounts receivable will be equal to the net value of the accounts transferred, i.e., the face amount of the accounts receivable previously included in income less the amount of the reserve for bad debts.

47. There will be no indebtedness between Controlled(C) and Operating Partnership, and there will be no indebtedness created in favor of Operating Partnership as a result of the transaction.

48. Any debt relating to stock being transferred to Controlled(C) that will be assumed (or to which such stock is subject) was incurred to acquire such stock and was incurred when such stock was acquired, and Operating Partnership will be transferring all of the stock for which the acquisition indebtedness being assumed (or to which such stock is subject) was incurred.

49. The total adjusted basis of the assets transferred by Operating Partnership to Controlled(C) in the transaction will equal or exceed the amount of liabilities assumed (within the meaning of Code section 357(d)) by Controlled(C) plus any liabilities to which the transferred assets are subject.

50. The total gross fair market value of the assets transferred by Operating Partnership to Controlled(C) in the transaction will equal or exceed the sum of the liabilities assumed (within the meaning of Code section 357(d)) by Controlled(C) plus any liabilities to which the transferred assets are subject. No liabilities owed to Controlled(C) by Operating Partnership or Distributing will be discharged or extinguished in connection with the distribution. The fair market value of the assets of Controlled(C) will exceed the amount of its liabilities immediately after the transaction.

51. The liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

52. The transfers and exchanges between Operating Partnership and Controlled(C) will occur under a plan agreed upon before the transaction in which the rights of the parties are defined. All exchanges will occur on approximately the same day.

53. There is no plan or intention on the part of Controlled(C) to redeem or otherwise reacquire any stock to be issued in the transaction.

54. Taking into account any issuance of additional shares of Controlled(C) stock; any issuance of stock for services; the exercise of any Controlled(C) stock rights, warrants, or subscriptions; a public offering of Controlled(C) stock; and the sale, exchange, transfer by gift or other disposition of any of the stock of Controlled(C) to be received in the exchange, Operating Partnership will be in "control" of Controlled(C) within the meaning of Code section 368(c).

55. Operating Partnership will receive stock approximately equal to the fair market value of the property transferred to Controlled(C).

56. Controlled(C) will remain in existence and retain and use the property transferred to it in a trade or business.

57. There will be no plan or intention by Controlled(C) to dispose of the transferred property other than in the normal course of business operations.

58. Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with the transaction.

59. The transfer to Controlled(C) will not be a transfer to an investment company within the meaning of Code section 351(e)(1) and Treas. Reg. § 1.351-1(c).

60. Operating Partnership is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of Code section 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of Operating Partnership.

61. Controlled(C) will not be a “personal service corporation” within the meaning of Code section 269A.

STEP TWO of the Proposed Controlled(C) Transaction

The taxpayer makes the following representations with respect to STEP TWO of the Proposed Controlled(C) Transaction:

62. Under Code section 731, no gain or loss will be recognized by Distributing or Operating Partnership as a result of the distribution of Controlled(C) stock by Operating Partnership to Distributing.

63. Distributing’s tax basis in its Controlled(C) stock will be determined by reference to Operating Partnership’s tax basis in the Controlled(C) stock under Code section 732(a)(1).

STEP THREE of the Proposed Controlled(C) Transaction

The taxpayer makes the following representations with respect to STEP THREE of the Proposed Controlled(C) Transaction:

64. Distributing, Controlled(C), and their respective shareholders will each pay their own expenses, if any, incurred in connection with the Proposed Controlled(C) Transaction.

65. No part of the consideration to be distributed by Distributing will be received by a Distributing Shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

66. Any indebtedness owed by Controlled(C) (or any entity controlled directly or indirectly by Controlled(C)) to Distributing after the Proposed Controlled(C) Transaction will not constitute stock or securities.

67. Neither the active trades and businesses of Distributing and Controlled(C), nor control of an entity conducting such businesses, were acquired during the five-year period ending on the date of the Proposed Controlled(C) Transaction in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.

68. The five years of financial information submitted on behalf of Distributing and Operating Partnership is representative of present operations of the Real Estate Business, and with regard thereto, there have been no substantial operational changes since the date of the last financial statements submitted.

69. The five years of Segment C financial information submitted on behalf of Controlled(C) is representative of the present operation of Segment C, and with regard thereto, there have been no substantial operational changes since the date of the last financial statements submitted.

70. No intercorporate debt will exist between Distributing and Controlled(C) at the time of, or subsequent to, the distribution of the Controlled(C) stock.

71. Payments made in connection with all continuing transactions, if any, between Distributing and Controlled(C), will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

72. Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Controlled(C) Transaction.

73. Following the Proposed Controlled(C) Transaction, Distributing and Controlled(C) will each continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the Real Estate Business prior to consummation of the transaction.

74. As of the date of the Proposed Controlled(C) Transaction, there will be no plan or intention to liquidate either Distributing or Controlled(C).

75. The distribution of the stock of Controlled(C) is carried out for the following corporate business purposes: (i) to allow Distributing and Controlled(C) to more effectively attract and retain management and key employees, (ii) to increase each company's ability to raise capital, including the company's ability to use its stock as acquisition currency, and (iii) to allow Distributing's management to focus on the retained Segments, while allowing Controlled(C)'s independent management to focus on Segment C. The distribution of the stock of Controlled(C) is motivated, in whole or substantial part, by one or more of these corporate business purposes.

76. For purposes of Code section 355(d), immediately after the Proposed Controlled(C) Transaction, no person (determined after applying Code section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in Code sections 355(d)(5) and (8)) during the five-year period (determined after applying Code section 355(d)(6)) ending on the date of the Proposed Controlled(C) Transaction.

77. For purposes of Code section 355(d), immediately after the Proposed Controlled(C) Transaction, no person (determined after applying Code section 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled(C) stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled(C) stock, that was either (i) acquired by purchase (as defined in Code sections 355(d)(5) and (8)) during the five-year period (determined after applying Code section 355(d)(6)) ending on the date of the Proposed Controlled(C) Transaction or (ii) attributable to distributions on Distributing stock that were acquired by purchase (as defined in Code sections 355(d)(5) and (8)) during the five-year period (determined after applying Code section 355(d)(6)) ending on the date of the Proposed Controlled(C) Transaction.

78. Immediately after the Proposed Controlled(C) Transaction, (i) neither Distributing nor Controlled(C) will be a disqualified investment corporation (within the meaning of Code section 355(g)(2)), and (ii) if any person holds a 50% or greater interest (within the meaning of Code section 355(g)(3)) in any disqualified investment corporation, such person will have held such interest in such corporation (either directly or through attribution) immediately before the Proposed Controlled(C) Transaction.

79. The Proposed Controlled(C) Transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled(C) or both.

80. The Proposed Controlled(C) Transaction is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest (within the meaning of Code section 355(d)(4)) in Distributing or Controlled(C) (including any predecessor or successor of any such corporation). There will not have been any agreements, understandings, arrangements, or substantial negotiations regarding any acquisition of stock representing a 50% or greater interest in Distributing or Controlled(C) at any time during the two-year period ending on the date of the Proposed Controlled(C) Transaction.

RULINGS

Proposed Controlled(B) Transaction

Based solely on the information submitted and the representations made, we rule as follows with respect to STEP ONE and STEP THREE of the Proposed Controlled(B) Transaction. No rulings have been requested, and none are given, with respect to STEP TWO of the Proposed Controlled(B) Transaction.

STEP ONE

1. No gain or loss will be recognized by Operating Partnership on the Controlled(B) Exchange. Sections 351(a) and 357(a).
2. No gain or loss will be recognized by Controlled(B) on the Controlled(B) Exchange. Section 1032(a).
3. The basis of each asset received by Controlled(B) will equal the basis of that asset in the hands of Operating Partnership immediately before the Controlled(B) Exchange. Section 362(a).
4. The holding period of each asset received by Controlled(B) will include the holding period of that asset in the hands of Operating Partnership immediately before the Controlled(B) Exchange. § 1223(2).

STEP THREE

5. No gain or loss will be recognized by Distributing on the distribution of its stock in Controlled(B) to the Distributing Shareholders. Section 355(c)(1).
6. No gain or loss will be recognized by the Distributing Shareholders on the receipt of stock of Controlled(B). Section 355(a).
7. The basis of the stock of Distributing and Controlled(B) in the hands of each shareholder of Distributing after the distribution of the Controlled(B) stock will equal such shareholder's basis in the stock of Distributing immediately prior to the distribution, allocated in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a). Sections 358(a), (b) and (c).
8. The holding period of the Controlled(B) stock received by the Distributing Shareholders will include the holding period of the Distributing stock on which the distribution is made, provided that the Distributing stock is held as a capital asset on the date of the distribution. Section 1223(1).
9. Earnings and profits, if any, will be allocated between Distributing and Controlled(B) in accordance with section 312(h) and Treas. Reg. § 1.312-10.

Proposed Controlled(C) Transaction

Based solely on the information submitted and the representations made, we rule as follows with respect to STEP ONE and STEP THREE of the Proposed Controlled(C) Transaction. No rulings have been requested, and none are given, with respect to STEP TWO of the Proposed Controlled(C) Transaction.

STEP ONE

10. No gain or loss will be recognized by Operating Partnership on the Controlled(C) Exchange. Sections 351(a) and 357(a).

11. No gain or loss will be recognized by Controlled(C) on the Controlled(C) Exchange. Section 1032(a).

12. The basis of each asset received by Controlled(C) will equal the basis of that asset in the hands of Operating Partnership immediately before the Controlled(C) Exchange. Section 362(a).

13. The holding period of each asset received by Controlled(C) will include the holding period of that asset in the hands of Operating Partnership immediately before the Controlled(C) Exchange. § 1223(2).

STEP THREE

14. No gain or loss will be recognized by Distributing on the distribution of its stock in Controlled(C) to the Distributing Shareholders. Section 355(c)(1).

15. No gain or loss will be recognized by the Distributing Shareholders on the receipt of stock of Controlled(C). Section 355(a).

16. The basis of the stock of Distributing and Controlled(C) in the hands of each shareholder of Distributing after the distribution of the Controlled(C) stock will equal such shareholder's basis in the stock of Distributing immediately prior to the distribution, allocated in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a). Sections 358(a), (b) and (c).

17. The holding period of the Controlled(C) stock received by the Distributing Shareholders will include the holding period of the Distributing stock on which the distribution is made, provided that the Distributing stock is held as a capital asset on the date of the distribution. Section 1223(1).

18. Earnings and profits, if any, will be allocated between Distributing and Controlled(C) in accordance with section 312(h) and Treas. Reg. § 1.312-10.

CAVEATS

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction

that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) whether the Distributions satisfy the business purpose requirement of § 1.355-2(b);
- (ii) whether the Distributions are being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled(B), Controlled(C), or any combination thereof (see section 355(a)(1)(B) and § 1.355-2(d));
- (iii) whether the Distributions are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in Distributing, Controlled(B) or Controlled(C) (see section 355(e) and § 1.355-7);
- (iv) whether Distributing qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code;
- (v) whether Controlled(B) or Controlled(C) will qualify as a REIT under part II of subchapter M of Chapter 1 of the Code;
- (vi) whether any gain or loss will be recognized by Distributing or Operating Partnership as a result of the distribution of Controlled(B) stock or Controlled(C) stock by Operating Partnership to Distributing; and
- (vii) the amount of Distributing's tax basis in its Controlled(B) stock or Controlled(C) stock, as well as whether Distributing's tax basis in its Controlled(B) stock or Controlled(C) stock will be determined by reference to Operating Partnership's respective tax basis in the Controlled(B) stock or Controlled(C) stock.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return for which it is relevant. Alternatively, any taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Thomas I. Russell

Thomas I. Russell
Branch Chief, Branch 6
Office of Associate Chief counsel (Corporate)

cc: